

223683



KAPLAN KIRSCH ROCKWELL



September 26, 2008

Hon Anne K. Quinlan
Surface Transportation Board
395 E Street, S W
Washington, DC 20423-0001

**Re: Chesapeake Railroad Company – Modified Rail Certificate
Finance Docket No. 32609**

Dear Ms Quinlan

I am enclosing an original and ten (10) copies of the Notice of the Maryland Transit Administration of Consummation of Trail Agreements in the above referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger Please note that a 3 5 inch diskette is enclosed with this document

Sincerely,

Charles A. Spitulnik

cc All parties of record

Enclosure

144901_1 doc

**ENTERED
Office of Proceedings**

SEP 26 2008

**Part of
Public Record**

Attorneys at Law
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223683



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32609

CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE

**NOTICE OF CONSUMMATION OF
TRAIL USE AGREEMENTS**

Communications with respect to this pleading
should be addressed to

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Allison I. Fultz
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Suite 800
Washington, DC 20036
(202) 955-5600
cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for the Maryland Transit Administration

Dated: September 26, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32609

CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE

**NOTICE OF CONSUMMATION OF
TRAIL USE AGREEMENTS**

Maryland Transit Administration, a modal agency of the Maryland Department of Transportation (“MTA”), hereby submits this notice that MTA has entered into trail use agreements for the line of railroad from milepost 0 0 in the Town of Clayton, Kent County, Delaware, to milepost 45.30 in Easton, Talbot County, Maryland, and also including the Oxford Branch connecting track from milepost 0.0 in Queen Anne, Queen Anne’s County, Maryland, to milepost 8 8 in Denton, Kent County, Maryland, a total of 54 10 miles (collectively, the “Clayton-Easton Line”) As described more fully below, MTA has entered into Trail Use Agreements with the Delaware Department of Natural Resources and Environmental Control (“DNREC”) for that portion of the line that is in Delaware, and with the Maryland Department of Natural Resources (“DNR”) for the portion of the line that is in Maryland.

The Board issued Decisions in this proceeding granting MTA’s requests to extend the time to negotiate a trail use agreement on July 10, 2006, January 5, 2007, July 5, 2007, December 26, 2007, and March 25, 2008 The current negotiating period will expire on September 27, 2008. A map of the line currently subject to the CITU is attached hereto as **Exhibit A**

MTA owns the Clayton-Easton Line, which the State of Maryland acquired from the Penn Central Corporation and others in 1982. This line is subject to a Certificate of Interim Trail Use ("CITU") issued by the Board on January 9, 2006, in STB Docket No. 32609, *Chesapeake R. Co. – Certificate of Interim Trail Use and Termination of Modified Certificate*, and STB Docket No. 29830, *Maryland and Delaware R. Co. – Termination of Modified Certificate*.

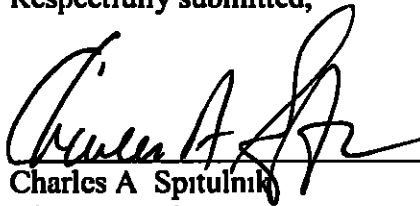
On July 7, 2007, the Board issued a decision in this proceeding partially vacating the CITU with respect to a 1645 foot segment of track in Easton, Talbot County, Maryland, known as the Easton Spur. MTA consummated the abandonment of the Easton Spur by notice filed at the Board on July 23, 2007.

MTA and DNREC have entered into a License Agreement dated September 25, 2008, addressing, among other things, the respective rights and obligations of MTA and DNREC with respect to trail use along the segment from milepost 0.0 in Clayton, Kent County, Delaware, to milepost 13.50 in Maryland, Kent County, Delaware (the "Delaware Segment"). Pursuant to the terms and conditions of the License Agreement, DNREC has executed a statement of willingness to assume financial responsibility in accordance with the requirements of 16 USC 1247(d) and 49 CFR 1152.29(a) ("SWAFR") for the Delaware Segment, which is attached hereto as **Exhibit B**.

MTA and DNR entered into a Lease Agreement dated June 20, 2007, for the remaining portions of the line, all of which are located in Maryland (the "Maryland Segment"). A SWAFR providing for DNR's assumption of responsibility for the Maryland Segment appears at Sections 15 and 16 of the Lease Agreement. A copy of the Lease Agreement is attached hereto as **Exhibit C**.

The existing CITU is supported by a SWAFR executed by the Maryland Department of Transportation ("MDOT") Copies of the Board's Decisions (1) issuing the CITU to MTA as the original trail sponsor (Service Date January 10, 2006), (2) substituting MDOT as the trail sponsor (Service Date July 5, 2007), and (3) partially vacating the CITU (Service Date March 25, 2008), are attached hereto as Exhibit D. Pursuant to 49 CFR 1152.29(f), MTA, hereby requests that the CITU be vacated and appropriate CITUs be issued to address DNREC's assumption of responsibility for the Delaware Segment and DNR's assumption of responsibility for the Maryland Segment as detailed above, all to be effective as of September 26, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Counsel for the Maryland Transit Administration

Dated. September 26, 2008

Exhibit A

Map of the Clayton-Easton Line

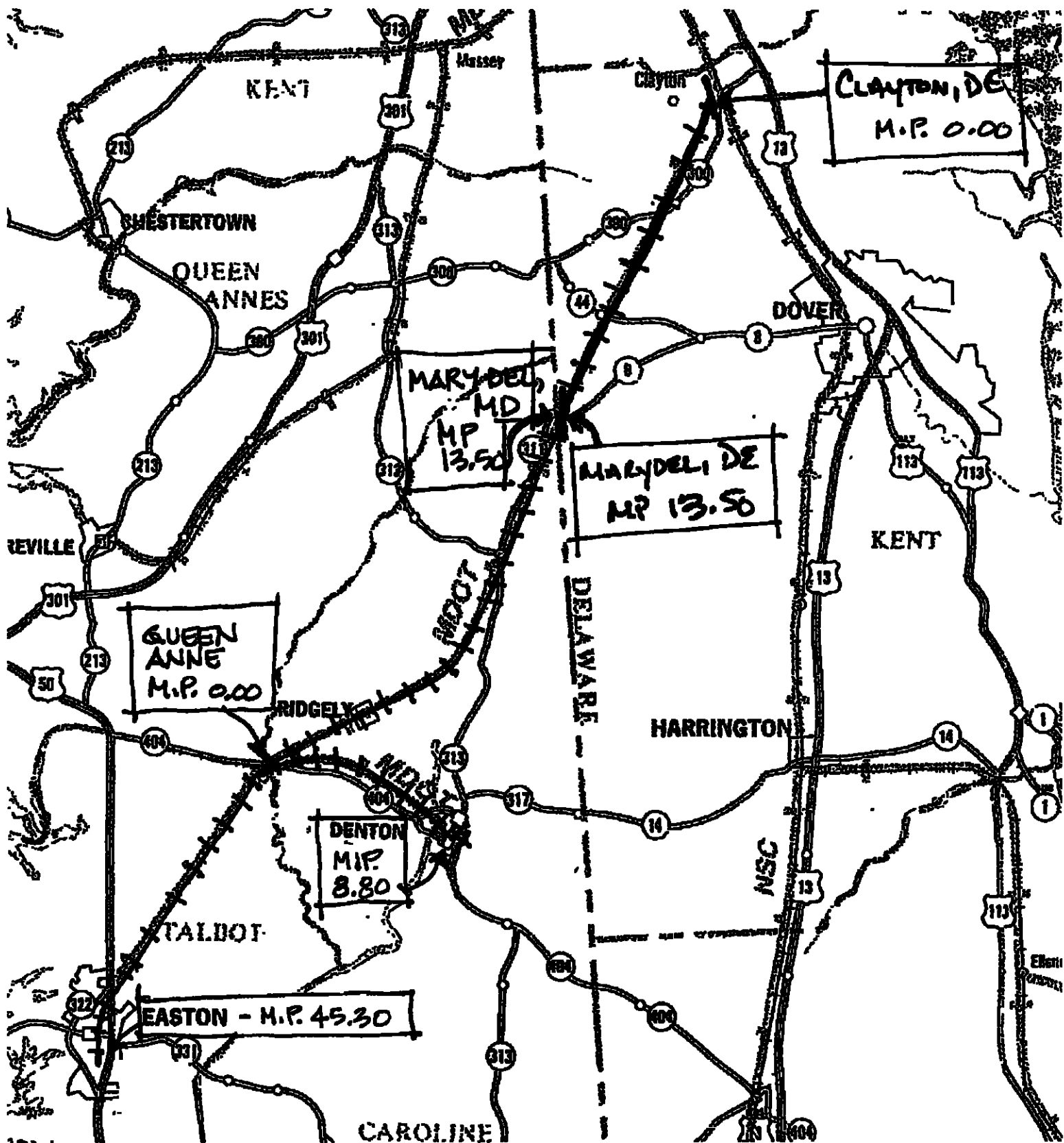


Exhibit B

Statement of Willingness to Assume Financial Responsibility of DNREC



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY
DELAWARE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL (DNREC)

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, DNREC is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the MTA against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by MTA. DNREC is entitled to sovereign immunity, and accordingly, will indemnify MTA against any potential liability provided that such indemnification shall not constitute or be deemed to constitute an obligation of future appropriations by the Delaware General Assembly.

The Area is part of a railroad line previously acquired by the State of Maryland known as the Oxford Secondary Tract and which extends from railroad milepost 0.0 near the Town of Clayton, Kent County Delaware, to railroad milepost 13.5, near the Town of Marydel, Kent County, Delaware. The right-of-way is part of a railroad line subject to a Certificate of Interim Trail Use issued by the Surface Transportation Board in Washington, D.C. on January 9, 2006 in STB Docket No. 32609, *Chesapeake R Co - Certificate of Interim Trail Use and Termination of Modified Rail Certificate* and STB Docket No. 29830, *Maryland and Delaware R Co - Termination of Modified Certificate*).

DNREC as the Interim Trail User acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

 24 SEP. 2008

Charles A. Salkin Date
Director
Division of Parks and Recreation
Department of Natural Resources and
Environmental Control



We're saving a place for you...

Exhibit C

Lease Agreement between MTA and DNR

LEASE AGREEMENT BETWEEN
MARYLAND TRANSIT ADMINISTRATION ("MTA")
AND
MARYLAND DEPARTMENT OF NATURAL RESOURCES ("MDNR")

THIS LEASE AGREEMENT ("Agreement") is entered into this 30th day of June, 2007, by and between the Maryland Transit Administration ("MTA" or "Lessor") located at 6 Saint Paul Street, Baltimore, MD 21202, a modal agency of the Maryland Department of Transportation ("MDOT"), acting by and on behalf of the State of Maryland, and the State of Maryland to the use of the Department of Natural Resources ("MDNR" or "Lessee")

WHEREAS, by Deed dated January 8, 1982, Lessor acquired certain railroad rights-of-way from the Penn Central Corporation and others, in Kent County, Delaware, which Deed is recorded among the land records of Kent County, Delaware, on November 22, 1982 at Record Q, Volume 37, Page 1, and in Talbot County, Maryland, which Deed is recorded among the land records of Talbot County on May 10, 1982 at Liber J T B No 564, Folio 182, and in Caroline County, Maryland, which Deed is recorded among the land records of Caroline County on May 11, 1982 at Liber M C B No 214, Folio 676 ("Rail Corridor"), and

WHEREAS, a certain railroad right-of-way located from the Town of Clayton, Kent County, Delaware proceeding in a southwesterly direction to the end of the line in the Town of Easton, Talbot County, Maryland (hereinafter referred to as the "Land") is currently inactive and is now subject to a Certificate of Interim Trail Use ("CITU") issued by the Surface Transportation Board ("STB") in Washington, D C on January 9, 2006 in STB Docket No 32609, *Chesapeake R Co - Certificate of Interim Trail use and Termination of Modified Rail Certificate* and STB Docket No 29830, *Maryland and Delaware R Co - Termination of Modified Certificate*, and

WHEREAS, by Chapter 658, Acts of 1990, the General Assembly of Maryland provided for the interim use of another portion of railroad corridor for public recreation by a MOU dated August 23, 1993 from the State Railroad Administration, now known as the Maryland Transit Administration to the MDNR and known as the Easton to Clayton Rail Trail, and

WHEREAS, the STB has recognized the right of the State of Maryland to utilize interim use provisions under the Federal Rail to Trails Act, committing to a restoration for freight use should such a need develop and be economically warranted, and

WHEREAS, the State of Maryland recognizes that interim use of railroad rights-of-way for public recreation produces transportation benefits such as maintenance of the right-of-way, prevention of vandalism, or other deterioration, and

WHEREAS, MTA and MDNR have agreed that the portion of the Rail Corridor located within Maryland and not including the portion located in Delaware would be appropriately used on an interim basis for public recreation as a rail trail, and

WHEREAS, it is the intent of the Lessor and Lessee that this lease encompass that portion of the Railroad Corridor within the State of Maryland from Mile Post 13.6 in Maryland, Caroline County, MD to Mile Post 45.3 in Easton, Talbot County, MD, as shown on valuation maps V3/1 to V3/32 for the Oxford Branch, and from Mile Post 0.0 in Queen Anne, MD to Mile Post 8.8 in Denton, MD, as shown on valuation maps V1 02-25 to V1 02-34 for Denton Spur, which valuation maps are filed among the records of Lessor that is within the general 66 foot wide trail corridor (the "Area"), and

WHEREAS, MDOT having filed a Statement of Willingness To Assume Financial Responsibility pursuant to 16 USC § 1247 (d) and 45 CFR § 1152.29, and

WHEREAS, it is the intent of Lessor and Lessee this Lease be for an interim use only for public recreation as a rail trail, that the Lease be subject to termination for restoration of the railroad right-of-way by MDOT and or MTA for railroad purposes, and that this Lease does not constitute an abandonment of use of the right-of-way for railroad purposes, and

WHEREAS, MTA, MDOT and MDNR mutually desire to commit themselves to certain terms for the interim use of the Area for public recreation,

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows

1 Incorporation of Recitals The above recitals are incorporated by reference and made a part of this Agreement.

2 Grant of Lease Lessor hereby grants to Lessee a lease of the Area, subject to the terms and conditions of this Agreement

3 Lessee's Responsibilities

(a) The Area shall be used exclusively for a recreational rail trail for public recreation

(b) During the term of the Lease, Lessee shall pay or cause to be paid all charges levied against the right-of-way as incurred by Lessee as part of Lessee's use of the Area

(c) Lessee shall be responsible for all costs and expenses to inspect, improve, maintain and repair the right-of-way, including bridges, for use as a rail trail only

(d) Lessee shall not be responsible for any cost or expense to maintain, repair, inspect, renovate, or replace any bridge or any portion of the Area for railroad or train uses even upon expiration or termination of this Agreement

(e) Lessee may make those alterations and improvements to the Area, consistent with a rail trail. However, Lessee will submit proposed alterations and improvements to any bridges to Lessor for its written prior approval

(f) Lessee acknowledges that the Area is subject to possible future restoration for rail use by the Lessor

4 Term Subject to the terms and conditions of the CITU, the term of this Agreement shall be fifty (50) years, commencing on the date this Agreement is signed by both parties and approved by the Maryland Board of Public Works and terminating fifty (50) years from that date

5 Sublease Lessor acknowledges that Lessee has the right to assign or sublease rights to portions of the Area to a local government subject to all the terms and conditions of this Agreement. Any sublease with a local government shall be subject to the prior approval of MTA and the Maryland Board of Public Works. Any sublease or assignment shall specifically acknowledge the potential that the Area is subject to restoration to rail service and shall subscribe specifically to the language set forth in Paragraph 15 of this Lease

6 MTA's Rights

(a) MTA shall at all times have the exclusive right to grant easements and licenses within the Area and sell excess parcels outside the generally sixty-six foot (66') wide rail corridor that are not used by Lessee in conjunction with the rail trail, so long as such uses are consistent and in no way interfere with Lessee's use of the Area as a rail trail. Such easements and licenses that may be granted by MTA may be for purposes, including but not limited to utilities, telecommunications, fiber optic communications and right-of-way

crossings. MTA reserves the right to all revenues from such easements and licenses as MTA may grant. For any action associated with such easements and licenses that may temporarily disrupt the operation of a rail trail on the Area, Lessor shall notify Lessee and/or sublessee thirty (30) days prior to the undertaking of any such action. For any action associated with such easements and licenses that may temporarily disturb or damage any rail trail improvements to the Area undertaken by Lessee or sublessee, MTA shall be required to return the Area to its immediately preceding condition.

(b) MTA shall remove all rails, joint bars, tie plates and ties from the Area. MTA shall be the sole owner of the rails, joint bars, tie plates and ties, and, accordingly, shall receive all revenues associated with the sale or other disposition of the rails, joint bars, tie plates and ties.

7 Notices Unless otherwise agreed, all notices or other communications to either party is given when made in writing and either personally delivered or deposited in the United States mail, postage prepaid, return receipt requested, to the following addresses:

For Lessor Maryland Transit Administration
Office of Real Estate
6 St. Paul Street
Baltimore, Maryland 21202
Attention Manager

For Lessee Maryland Department of Natural Resources
Land & Property Management
580 Taylor Avenue, E-4
Annapolis, Maryland 21401
Attention Director

A party may change the address to which notices to it are directed by such notice.

8 Termination

This Agreement may be terminated at any time by either party hereto upon minimum six (6) months prior notice in writing to the other party. If Lessee intends to terminate rail trail use and has not transferred its rights and obligations hereunder to an approved sublessee, Lessee via Lessor shall send the STB a copy of the CITU and ask that the CITU be vacated on the specific date on which it intends to terminate trail use. Upon termination by Lessee, all improvements or alterations made by Lessee or any sublessee shall be removed, or with the consent of Lessor abandoned for the sole use and benefit of Lessor without compensation.

9 Non-Assignment and Non-Waiver

(a) Lessee shall not assign any of its rights or delegate any of its duties hereunder without the express prior written consent of MTA and the Maryland Board of Public Works, except as set forth in Section 5 for uses by local government. Any attempted assignment or delegation without MTA's or Maryland Board of Public Works consent is void ab initio.

(b) The failure of MTA at any time to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy under this Agreement, shall not impair any such right or remedy or be deemed a waiver or relinquishment thereof.

10 Headings The within headings are for convenience and shall not effect any construction or interpretation of this Agreement. The singular shall be read to include the plural, and vice versa, unless the context clearly requires otherwise.

11 Severability If any provision is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provisions of this Agreement, which shall remain in full force and effect.

12 Miscellaneous This Agreement

- (a) shall inure to the benefit of and bind the parties and their respective successors or assigns,
- (b) constitutes the entire agreement between the parties,
- (c) may be amended or supplemented only by a writing signed by the parties,
- (d) may be executed in several counterparts, each of which shall constitute an original,
- (e) is not for the benefit of or enforceable by any third party, and shall not be deemed to create any rights or benefits in any third party,
- (f) and the obligations of the parties hereto are subject to appropriations of the Maryland General Assembly, and
- (g) shall be governed by the laws of the State of Maryland

13 Breach, Default

- (a) There shall be an "Event of Default by Lessee" if Lessee shall breach or fail to perform any of its covenants or duties, and Lessee does not cure the breach or failure within seven (7) days after notification by Lessor, verbally or in writing of such breach or failure
- (b) Upon the occurrence of an Event of Default by Lessee, Lessor has the following rights, in addition to any other rights it may have to terminate this Lease and all of Lessee's rights and interest, whereupon Lessee shall immediately quit and surrender the Area to Lessor, and Lessor shall have no further obligation to Lessee

14 Relationship Between the Parties The relationship between the parties is that of Lessor and Lessee. Nothing in this Lease shall be construed as creating any other relationship between the parties

15 Statement of Willingness to Assume Financial Responsibility In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, Lessee is willing to assume, under the provisions of the Maryland Torts Claims Act, responsibility for management of, and for any legal liability arising out of, the Lessee's use of the Area as a public recreation rail trail. The Area is part of a line of railroad previously acquired by the State of Maryland, and for which the Modified Certificates of Public Convenience and Necessity have been terminated in STB Finance Docket No. 32609 and STB Finance Docket No. 29830. Lessee acknowledges that use of the Area is subject to the Lessee's continuing to meet its responsibilities described above and subject to possible future reconstruction at Lessor's cost and reactivation of the right-of-way for rail service.

16 Indemnity and Liability Subject to appropriations by the Maryland General Assembly and to the extent permitted by law (if at all), Lessee shall protect, indemnify, defend and hold harmless, and shall require in its agreements with contractors and subcontractors that they shall protect, indemnify, defend and hold harmless Lessor, its officers, agents, employees, successors and assigns or contractors, against and with respect to any and all liabilities arising out of or in any way connected with (a) the exercise or performance by Lessee (or its agents, officers, employees, successors or assigns or contractors) of any of its rights or obligations hereunder, (b) the use or operation by Lessee (or its officers, agents, employees, successors and assigns or contractors) of the Trail, or (c) work performed by or on behalf of Lessee upon the Trail. As used herein,

"Liabilities" shall include any and all losses, claims, damages, suits, liabilities or costs whatsoever (including without limitation reasonable attorney's fees and cost of suit), which arise (a) out of injury to any person (including without limitation loss of limb or death), (b) out of damage to or destruction of any property of any person whomsoever, (c) out of interruption of rail or transit services including without limitation loss of revenue income, (d) out of damage to or destruction of the environment, including without limitation land, air, water, wildlife, or vegetation (including, but not limited to, costs and expenses incident to monitoring, remedial actions, proceedings or investigations or the defense of any claim), or (e) out of, or occasioned by, any breach or default by Lessee (or its agents, officers, employees, successors, or assigns or contractors) in performing any of its obligations hereunder or under any applicable law. The foregoing does not waive or limit the rights of the parties under the Maryland Tort Claims Act and other Maryland law. The foregoing obligations shall survive termination of this Agreement with respect to liabilities arising during its term.

17 This Agreement is contingent upon approval of the Maryland Board of Public Works.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective Administrator and Secretary, as of the day and year first written above.

Witness

Kim G. Kim

Approved for form and
legal sufficiency

T. Byron Smith
T. Byron Smith, AAG
MTA, Office of General Counsel

MARYLAND TRANSIT ADMINISTRATION

By Paul Wiedefeld
Paul Wiedefeld, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Witness
Robert P. Hymowitz

Approved for form and
legal sufficiency

Thomas G. Peters
MDOT, Assistant Attorney General

By John Porcari (SEAL)
John Porcari
Secretary

MARYLAND DEPARTMENT OF NATURAL RESOURCES

Witness

Sean Lippard


Approved for form and
Legal sufficiency

Shaun P. K. Fehlon
Shaun P. K. Fehlon
DNR, Assistant Attorney General


By Kristin M. Saunders (SEAL)
for Kristin M. Saunders
Assistant Secretary

STATE OF MARYLAND
BOARD OF PUBLIC WORKS

By  (SEAL)
Martin O'Malley
Governor

WITNESS

Sheila McDonald
Secretary, Board of
Public Works

By  (SEAL)
Nancy K. Kopp
Treasurer

By  (SEAL)
Peter Franchot
Comptroller

This Lease Agreement was approved by the Maryland Board of Public Works on
June 20, 2007 as Item 18-LL

State of Maryland
County of Baltimore City

On this the 25th day of July, 2007, before me,
the undersigned officer, personally appeared Paul J. Wiedefeld, Administrator of the
Maryland Transit Administration, known to me (or satisfactorily proven) to be the person
described in the foregoing instrument, and acknowledged that he executed the same in the
capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal



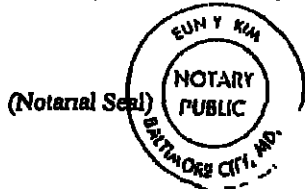

Notary Public

Commission expires July 1, 2009

State of Maryland
County of Baltimore City

On this the 25th day of July, 2007, before me,
the undersigned officer, personally appeared John Porcari, Secretary, of the Maryland
Department of Transportation, known to me (or satisfactorily proven) to be the person
described in the foregoing instrument, and acknowledged that he executed the same in the
capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal




Notary Public

Commission expires July 1, 2009

State of Maryland
County of Anne Arundel

On this the 12th day of April, 20 07, before me,
the undersigned officer, personally appeared Kristin M. Saunders, Assistant Secretary,
Department of Natural Resources of the State of Maryland, known to me (or satisfactorily
proven) to be the person described in the foregoing instrument, and acknowledged that,
being authorized so to do, executed the same in the capacity therein stated and for the
purposes therein contained

In witness whereof I hereunto set my hand and official seal

(Notarial Seal)

Geoff M. Lippard
Notary Public
Commission expires 4/1/09

State of Maryland
County of Anne Arundel

On this the 11th day of July, 20 07, before me,
the undersigned officer, personally appeared Martin O'Malley Governor, a member of
the Board of Public Works of the State of Maryland, known to me (or satisfactorily
proven) to be the person described in the foregoing instrument, and acknowledged that he
executed the same in the capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal

(Notarial Seal)

Charmaine Boschen
Notary Public
Commission expires 12/1/07

State of Maryland
County of Anne Arundel

On this the 11 day of July, 20 07, before me,
the undersigned officer, personally appeared Peter Franchot, Comptroller, a member of
the Board of Public Works of the State of Maryland, known to me (or satisfactorily
proven) to be the person described in the foregoing instrument, and acknowledged that he
executed the same in the capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal

(Notarial Seal)

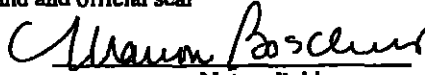
Charmaine Boschen
Notary Public
Commission expires 12/1/07

Blair
6/20/07
DOT 18-11

State of Maryland
County of Anne Arundel

On this the 11 day of July, 20 07, before me,
the undersigned officer, personally appeared Nancy K. Kopp, Treasurer, a member of the
Board of Public Works of the State of Maryland, known to me (or satisfactorily proven)
to be the person described in the foregoing instrument, and acknowledged that she
executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal



Notary Public

(Notarial Seal)

Commission expires

12/1/07

Approved by the Board of Public Works of the State of Maryland at a meeting held on
the 20 day of June, 2007, as Item No DOT, 18-LL

Exhibit D

Existing CITU:

- 1. January 9, 2006 – Issuance of CITU**
- 2. July 10, 2006 – Board decision granting substitution of MDOT as trail user**
- 3. July 5, 2007 – Board decision partially vacating CITU with respect to the Easton Spur**

36078
DO

SERVICE DATE – LATE RELEASE JANUARY 9, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Finance Docket No 32609

**CHESAPEAKE RAILROAD COMPANY—CERTIFICATE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE**

Finance Docket No 29830¹

**MARYLAND AND DELAWARE RAILROAD COMPANY—
TERMINATION OF MODIFIED RAIL CERTIFICATE**

Decided January 9, 2006

In Chesapeake Railroad Company—Modified Rail Certificate, Finance Docket No 32609 (ICC served Nov 23, 1994), Chesapeake Railroad Company (CHRR) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, subpart C, to operate approximately 54.1 miles of rail line owned by the State of Maryland between milepost 00.0 at Clayton, DE, and milepost 45.3 at Easton, MD, and a connecting branch line between milepost 00.0 at Queen Anne, MD, and milepost 8.8 at Denton, MD (collectively, Clayton-Easton line)

On July 28, 2005, the Maryland Transit Administration (MTA), on behalf of the State of Maryland, filed notice on behalf of CHRR of its intent to terminate service under the modified certificate over the Clayton-Easton line.² On that same date, MTA filed a request for issuance of a certificate of interim trail use (CITU) under the National Trails System Act, 16 U.S.C. 1247(d), for the Clayton-Easton line. MTA submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service.

¹ These proceedings are not consolidated but are being considered in the same decision for administrative convenience.

² Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. However, according to MTA, CHRR, the operator, has ceased operating over the Clayton-Easton line, the operating agreement between CHRR and MTA was terminated on October 31, 1998, and CHRR has subsequently forfeited its status as a corporate entity in Maryland.

In Maryland and Delaware Railroad Company—Modified Rail Certificate, Finance Docket No 29830 (ICC served Feb 9, 1982), Maryland and Delaware Railroad Company (M&D) was issued a modified certificate under then 49 CFR 1120A to provide service in Maryland and Delaware, including service over the Clayton-Easton line. On August 17, 2005, M&D filed notice of its intent to terminate service under a modified certificate over the Clayton-Easton line.

Because MTA's request complies with the requirements of 49 CFR 1152.29, a CITU will be issued for the above-described line. MTA is free to negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, then no further Board action is necessary. If no agreement is reached within 180 days, the line may be fully abandoned. See 49 CFR 1152.29(c)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(c)(2).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

- 1 The request for a CITU under 16 U.S.C. 1247(d) is accepted.
- 2 If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the owner against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
- 3 Interim trail use/rail banking is subject to the future restoration of rail service and the user's continuing to meet the financial obligations for the ROW.
- 4 If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and certificate and request that it be vacated on a specified date.
- 5 If an agreement for interim trail use/rail banking has been reached by the 180th day after service of this decision and certificate, interim trail use may be implemented. If no agreement is reached by that time, the line may be fully abandoned.

Finance Docket No 32609 et al

6 This decision is effective on its service date

By the Board, David M Konschnik, Director, Office of Proceedings

**Vernon A Williams
Secretary**

37082
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SERVICE DATE – JULY 10, 2006

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No 32609

**CHESAPEAKE RAILROAD COMPANY—CERTIFICATE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE**

Decided July 7, 2006

In Chesapeake Railroad Company—Modified Rail Certificate, Finance Docket No 32609 (ICC served Nov 23, 1994), Chesapeake Railroad Company (CHRR) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, subpart C, to operate approximately 54.1 miles of rail line owned by the State of Maryland between milepost 00.0 at Clayton, DE, and milepost 45.3 at Easton, MD, and a connecting branch line between milepost 00.0 at Queen Anne, MD, and milepost 8.8 at Denton, MD (collectively, Clayton-Easton line)

On July 28, 2005, the Maryland Transit Administration (MTA), on behalf of the State of Maryland, filed notice on behalf of CHRR of its intent to terminate service under the modified certificate over the Clayton-Easton line.¹ On that same date, MTA filed a request for issuance of a certificate of interim trail use (CITU) under the National Trails System Act, 16 U.S.C. 1247(d), for the Clayton-Easton line. MTA submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service.

On January 9, 2006, a decision and CITU was served authorizing a 180-day period for MTA to negotiate an interim trail use/rail banking agreement for the Clayton-Easton line.

On June 7, 2006, MTA filed a motion to extend the negotiating period for an additional 180 days.²

¹ Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. CHRR, however, no longer had an operating agreement with MTA, and CHRR was determined to have ceased existence as a corporate entity in Maryland. Therefore, the Board allowed MTA to file on CHRR's behalf.

² MTA's motion stated that it was in the process of negotiating an agreement with the Maryland Department of Natural Resources (DNR) to assume the responsibility of trail user for the Clayton-Easton line. However, the Board had received no statement of willingness to assume financial responsibility from DNR, and MTA was asked to supplement its motion.

On June 28, 2006, MTA filed a supplemental motion for an extension of the 180-day negotiating period. MTA states that it is currently negotiating an agreement with the Maryland Department of Transportation (MDOT) to assume the responsibility of trail user for the Clayton-Easton line.³ The parties request an additional 180 days to complete the required agreement so that MDOT may complete an inspection of the line prior to assuming its trail user responsibilities.

Where, as here, the parties are willing to continue trail use negotiations, the negotiating period may be extended. An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the National Trails System Act.⁴ Accordingly, the CITU negotiating period will be extended for an additional 180 days from July 10, 2006 (until January 6, 2007).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

- 1 The motion of MTA to extend the CITU negotiating period is granted
- 2 The negotiating period under the CITU is extended for 180 days until January 6, 2007
- 3 This decision is effective on the date of service

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams
Secretary

³ MDOT executed the necessary statement of willingness to assume financial responsibility as an attachment to MTA's supplemental motion.

⁴ See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C. 2d 152, 157-58 (1987).

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SERVICE DATE – LATE RELEASE JULY 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No 32609

**CHESAPEAKE RAILROAD COMPANY—CERTIFICATE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE**

Decided July 5, 2007

In Chesapeake Railroad Company—Modified Rail Certificate, Finance Docket No 32609 (ICC served Nov 23, 1994), Chesapeake Railroad Company (CHRR) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, subpart C, to operate approximately 54.1 miles of rail line owned by the State of Maryland between milepost 00.0 at Clayton, DE, and milepost 45.3 at Easton, MD, and a connecting branch line between milepost 00.0 at Queen Anne, MD, and milepost 8.8 at Denton, MD (collectively, Clayton-Easton line)

On July 28, 2005, the Maryland Transit Administration (MTA), on behalf of the State of Maryland, filed notice on behalf of CHRR of its intent to terminate service under the modified certificate over the Clayton-Easton line.¹ On that same date, MTA filed a request for issuance of a certificate of interim trail use (CITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the Clayton-Easton line. MTA submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service.

On January 9, 2006, a decision and CITU was served authorizing a 180-day period for MTA to negotiate an interim trail use/rail banking agreement for the Clayton-Easton line.

On June 7, 2006, MTA filed a motion to extend the negotiating period for an additional 180 days. MTA's motion stated that it was in the process of negotiating an agreement with the Maryland Department of Natural Resources (DNR) to assume the responsibility of trail user for the Clayton-Easton line. However, the Board had received no statement of willingness to assume financial responsibility from DNR, and MTA was asked to supplement its motion. On June 28, 2006, MTA filed a supplemental motion, stating that MTA was negotiating with the

¹ Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. CHRR, however, no longer had an operating agreement with MTA, and CHRR was determined to have ceased existence as a corporate entity in Maryland. Therefore, the Board allowed MTA to file on CHRR's behalf.

Maryland Department of Transportation (MDOT) to assume the responsibility of trail user for the Clayton-Easton line MDOT executed the necessary statement of willingness to assume financial responsibility as an attachment to MTA's supplemental motion By decision served on July 10, 2006, the Board granted MTA's motion to extend the CITU negotiating period an additional 180 days, until January 6, 2007 On December 18, 2006, MTA filed a motion to further extend the negotiating period an additional 180 days (until July 5, 2007) By decision served on January 5, 2007, the Board granted MTA's motion to extend the CITU negotiating period

On June 13, 2007, MTA filed a notice of intent pursuant to 49 CFR 1152.29(c), to remove property known as the "Easton Spur" from the CITU The Easton Spur consists of a parcel of approximately 5.514 acres on which is situated a spur track extending between the main ROW at approximately milepost 45.3, at Easton, and U.S. Route 50, a distance of approximately 1,645 feet

MTA has complied with the requirements of 49 CFR 1152.29(c)(2) regarding a request to partially vacate the CITU Whenever a trail user intends to terminate trail use over a portion of the ROW and sends the Board a request that a CITU be vacated in part, the Board will reopen the proceeding and partially vacate the CITU Therefore, MTA's request to partially vacate the CITU will be granted with respect to 5.514 acres of the ROW

On June 14, 2007, MTA filed a motion to extend the negotiating period for the remaining ROW an additional 180 days (until January 1, 2008) MTA states that its negotiations with MDOT are continuing, and that MDOT has asked for additional time to complete its inspection of the line prior to assuming the responsibilities as the trail user MTA also states that MDOT has authorized MTA to state that it concurs with the request for an extension

Where, as here, the parties are willing to continue trail use negotiations, the negotiating period may be extended An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act² Accordingly, the CITU negotiating period will be extended for an additional 180 days from July 5, 2007 (until January 1, 2008)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources

It is ordered

- 1 This proceeding is reopened

² See Rail Abandonments-Supplemental Trails Act Procedures, 41 C.C.2d 152, 157-58 (1987)

2 MTA's request to vacate the CITU for the 5 514 acres of the ROW described above is granted

3 The CITU, served on January 9, 2006, is vacated with respect to 5 514 acres of the ROW known as the Easton Spur. The CITU will remain in effect for the remainder of the ROW described in the January 2006 decision

4 The motion of MTA to extend the CITU negotiating period is granted

5 The negotiating period for the remaining ROW under the CITU is extended for 180 days until January 1, 2008

6 This decision is effective on the date of service

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing NOTICE OF THE MARYLAND TRANSIT ADMINISTRATION OF CONSUMMATION OF TRAIL USE AGREEMENTS, upon the following parties of record in this proceeding by first class mail with postage prepaid and properly addressed:

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Charles A. Spitulnik

Dated this 26th day of September, 2008